

10-895 GONZALEZ V. THALER

DECISION BELOW: 623 F.3d 222

LOWER COURT CASE NUMBER: 08-10871

QUESTION PRESENTED:

The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), Pub. L. No. 104-132, Title I, 110 Stat. 1217, establishes a one-year statute of limitations for a state prisoner to file a federal habeas corpus petition. As relevant here, that limitation period runs from "the date on which the judgment [of conviction] became final by the conclusion of direct review or the expiration of the time for seeking such review." 28 U.S.C. § 2244(d)(1)(A).

The Questions Presented are:

I. Whether state law is relevant to determining when the States' direct review processes conclude, as the Seventh, Eighth, and Eleventh Circuits have held, or whether AEDPA dictates a single federally prescribed point in time when all state direct-review processes are deemed to have concluded, as the Fifth and Ninth Circuits have held

II. Whether, under AEDPA, the "conclusion of direct review" occurs upon (i) issuance of an intermediate appellate court's mandate, as the Eighth Circuit has held, (ii) expiration of the time for seeking discretionary review in the state's highest court, as the Fifth Circuit held, or (iii) issuance of the intermediate appellate court's decision, as the Ninth Circuit has held.

III. Whether "expiration of the time for seeking [direct] review" under Section 2244(d)(1)(A) includes the ninety-day period for filing a petition for a writ of certiorari with this Court even when the petitioner forewent discretionary review in the state's highest court, as the Fourth and Seventh Circuits have held, or excludes that time, as the Fifth, Eighth, Ninth, and Eleventh Circuits have held.

LIMITED TO THE FOLLOWING QUESTIONS: 1. WAS THERE JURISDICTION TO ISSUE A CERTIFICATE OF APPEALABILITY UNDER 28 U.S.C. §2253(C) AND TO ADJUDICATE PETITIONER'S APPEAL? 2. WAS THE APPLICATION FOR A WRIT OF HABEAS CORPUS OUT OF TIME UNDER 28 U.S.C. §2244(D)(1) DUE TO "THE DATE ON WHICH THE JUDGMENT BECAME FINAL BY THE CONCLUSION OF DIRECT REVIEW OR THE EXPIRATION OF THE TIME FOR SEEKING SUCH REVIEW"?

CERT. GRANTED 6/13/2011